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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 JULIO SMITH PARRA,

12 Petitioner,

13 vs.

14 D.W. NEVEN, *et al.*,

15 Respondents.  
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Case No. 3:14-cv-00288-HDM-VPC

**ORDER**

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18 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254  
19 by a Nevada state prisoner. Before the Court is respondents' motion to dismiss the petition. (ECF  
20 No. 7).

21 **I. Procedural History**

22 On August 22, 2012, petitioner filed a post-conviction habeas petition in state district court.  
23 (Exhibit 1).<sup>1</sup> In his petition, petitioner challenged the denial of his parole. (*Id.*). On September 19,  
24 2012, the state district court filed an order directing respondents to answer or otherwise respond to  
25 the petition. (Exhibit 2). On October 19, 2012, respondents filed a motion to dismiss the petition,  
26 alleging that the claim was not cognizable in Nevada habeas corpus proceedings, and in the  
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28 <sup>1</sup> The exhibits referenced in this order are found in the Court's record at ECF No. 7.

1 alternative, the Nevada parole statutes create no liberty interest. (Exhibit 3). On October 31, 2012,  
 2 petitioner filed an opposition to the motion to dismiss. On January 24, 2014, the state district court  
 3 filed an order granting the motion to dismiss. (Exhibit 5). On February 19, 2014, petitioner filed  
 4 his notice of appeal. (Exhibit 6). The Nevada Supreme Court affirmed the district court's dismissal  
 5 of the state habeas petition on June 12, 2014. (Exhibit 8). Remittitur issued on July 7, 2014.  
 6 (Exhibit 9).

7 Petitioner dispatched his federal petition to this Court on May 31, 2014. (ECF No. 5, at p.  
 8 1). Respondents have filed a motion to dismiss the petition. (ECF No. 7). Although this Court  
 9 granted petitioner three extensions of time to oppose the motion to dismiss, petitioner has not filed  
 10 an opposition. (ECF Nos. 10, 13, 15). The Court now rules on the motion to dismiss the petition.

## 11 **II. Discussion**

12 A state prisoner is entitled to federal habeas relief only if he is being held in custody in  
 13 violation of the constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). Pursuant to  
 14 Rule 2(c) of the Rules Governing Section 2254 Cases, a federal habeas petition must specify all  
 15 grounds for relief and "state the facts supporting each ground." Claims based on conclusory  
 16 allegations are not a sufficient basis for federal habeas relief. *See Mayle v. Felix*, 545 U.S. 644,  
 17 655-56 (2005) (acknowledging that notice pleading is insufficient to satisfy the specific pleading  
 18 requirement for federal habeas petitions). Unless an issue of federal constitutional or statutory law  
 19 is implicated by the facts presented, the claim is not cognizable under federal habeas corpus. *Estelle*  
 20 *v. McGuire*, 502 U.S. 62, 68 (1991).

21 An inmate only has a liberty interest in parole procedures if state statutes create an  
 22 expectancy of release that is entitled to constitutional protection. *Greenholtz v. Inmates of Nebraska*  
 23 *Penal and Correctional Complex*, 442 U.S. 1, 12 (1979). Such a determination is made on a case-  
 24 by-case basis. *Id.* In 1989, the Nevada Legislature declared that parole in Nevada is an act of grace,  
 25 creating no liberty interest. The relevant statute reads as follows:

26 The Legislature finds and declares that the release or continuation of a  
 27 person on parole or probation is an act of grace of the State. No  
 28 person has a right to parole or probation, or to be placed in residential  
 confinement, and it is not intended that the establishment of standards  
 relating thereto create any such right or interest in liberty or property

1 or establish a basis for any cause of action against the State, its  
 2 political subdivisions, agencies, boards, commissions, departments,  
 officers or employees.

3 NRS 213.10705. The Ninth Circuit has ruled that Nevada inmates have no protected liberty interest  
 4 in parole. *Moor v. Palmer*, 603 F.3d 658, 661-62 (9<sup>th</sup> Cir. 2010). As such, the petition fails to state  
 5 a cognizable claim for federal habeas relief.

### 6 **III. Certificate of Appealability**

7 District courts are required to rule on the certificate of appealability in the order disposing of  
 8 a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and  
 9 request for certificate of appealability to be filed. Rule 11(a). In order to proceed with his appeal,  
 10 petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup>  
 11 Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006). Generally, a petitioner must  
 12 make “a substantial showing of the denial of a constitutional right” to warrant a certificate of  
 13 appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The  
 14 petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the  
 15 constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet  
 16 this threshold inquiry, the petitioner has the burden of demonstrating that the issues are debatable  
 17 among jurists of reason; that a court could resolve the issues differently; or that the questions are  
 18 adequate to deserve encouragement to proceed further. *Id.* In this case, no reasonable jurist would  
 19 find this Court’s dismissal of the petition debatable or wrong. The Court therefore denies petitioner  
 20 a certificate of appealability.

### 21 **IV. Conclusion**

22 **IT IS THEREFORE ORDERED** that respondents’ motion to dismiss (ECF No. 7) is  
 23 **GRANTED.**

24 **IT IS FURTHER ORDERED** that the petition is **DISMISSED WITH PREJUDICE** for  
 25 failure to state a cognizable federal habeas corpus claim.

26 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**  
 27 **APPEALABILITY.**

Dated this 21<sup>st</sup> day of August, 2015.

HOWARD D. McKIBBEN  
UNITED STATES DISTRICT JUDGE